IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1270 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JEETENDRAKUMAR PRATAPBHAI THAKORE - Applicant(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR RJ GOSWAMI for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/07/2007

ORAL JUDGMENT

1. Rule. Shri M.R.Mengde, learned APP waives service of rule on behalf of the respondent – State.

2. By way of this petition under Article 226 of the Constitution of India r.w. Section 154 of the Code of Criminal Procedure, the petitioner – original complainant has prayed for an appropriate order directing the respondent No.3 – Officer In-charge of Madhupra Police Station to lodge the FIR in connection with the written complaint at Annexure – A to the petitioner and to hand over the investigation to CID Crime, State of Gujarat.

3. A grievance is voiced in the present petition that the petitioner has initially filed a complaint by making an application to the Commissioner of Police, Ahmedabad against Santsangi Jivandas Swami alias Kothari Swami for the cognizable offence under IPC, still the same has not been registered as FIR. It is the case on behalf of the petitioner that even the petitioner has also filed a complaint before the respondent No.3, still the said complaint is not registered as FIR as required to be registered

under Section 154 of the Code of Criminal Procedure.

4. Shri Goswami, learned advocate appearing for the petitioner while relying upon the judgment of the Hon'ble Supreme Court in case of ***Parkash Singh Badal & Another V/s. State of Punjab & Others*** reported in **(2007) 1 SCC 1,** has submitted that as held by the Hon'ble Supreme Court, if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirement of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. Therefore, it is requested to direct the respondent No.3 to register the complaint submitted by the petitioner which is at Annexure – A to the petition.

5. Shri M.R.Mengde, learned APP has also relied upon paragraph – 66 of the said judgment and has

submitted that as observed by the Hon'ble Supreme Court that in case an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing by post to the Superintendent of Police concerned who is required to exercise the powers under Section 154(3) of the Code of Criminal Procedure.

6. Heard the learned advocates appearing for the respective parties.

7. It is required to be noted that it is the case on behalf of the petitioner that the petitioner has approached the respondent No.3 – Police Officer as the complaint submitted by the petitioner is not registered as FIR. He has also approached the Commissioner of Police. Thus, considering the provisions of Section 154(3) of

the Code of Criminal Procedure, when the petitioner has already approached the Commissioner of Police, the Commissioner of Police is required to exercise the powers under Section 154(3) of the Code of Criminal Procedure. As held by the Hon'ble Supreme Court in case of **Parkash Singh Badal & Another** (supra), in case an officer in charge of the police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty case upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned, who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code. Under the circumstances, when the petitioner has

already now approached the Commissioner of Police by complaint at Annexure – A to the petition, in that case, the Commissioner of Police is directed to look into the same and consider the said information / complaint and if he is satisfied that the information forwarded to him discloses a cognizable offence, is directed to either investigate the case himself or direct an investigation to be made by subordinate to him in a manner provided by Sub-section (3) of Section 154 of the Code. The said exercise to be completed within a period of four weeks from today.

8. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[M.R.Shah, J.]

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